

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:050D-226

Oahu

Cancellation of Revocable Permit No. S-6903 to Kahala Hotel Associates Limited Partnership and Issuance of Revocable Permit to Kahala Hotel Investors, LLC, Kahala, Waialae, Oahu, Tax Map Key:(1) 3-5-023:041.

APPLICANT:

Kahala Hotel Investors, LLC, a Delaware limited liability corporation whose business and mailing address is 1 Aloha Tower Drive, Suite 3100, Honolulu, Hawaii 96813.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waialae situated at Waialae, Honolulu, Oahu, identified by Tax Map Key:(1) 3-5-023:041, as shown on the attached map labeled Exhibit A.

AREA:

40,460 sq. ft., more or less.

ZONING:

State Land Use District: Urban
County of P-2 CZO: General Preservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X_____

CURRENT USE STATUS:

Encumbered under Revocable Permit No. S-6903 to Kahala Hotel Associates Limited Partnership.

December 8, 2006

CHARACTER OF USE:

Recreational and maintenance purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

To be determined by staff appraiser, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "there will be negligible or no expansion or change of use beyond that previously existing".

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>X</u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u>X</u>	NO	<u> </u>

REMARKS:

The Land Board at its meeting of December 17, 1993, under agenda item F-1-a, approved the issuance of Revocable Permit No. S-6903 to the Kahala Hotel Associates Limited Partnership for a Beach Reserve area seaward of the Kahala Hotel at Waialae, Oahu. This Beach Reserve consisted of approximately 32,860 sq. ft.

At its meeting of December 15, 1995, under agenda item F-22, the Board approved as amended, the issuance of a revocable permit to Kahala Hotel Associates Limited Partnership to increase the permit area by an additional 7,600 sq. ft., which would increase the total permit area to 40,460 sq. ft. The initial permits under Revocable Permit No. S-6903 issued in 1993 and Revocable Permit No. S-4220, which was issued in 1968, had left out the rock goins and an island located on the submerged land located seaward of the Beach Reserve which was constructed by the Kahala Hilton Hotel Company pursuant to a development agreement between the hotel and the State of Hawaii signed in February 15, 1963, which was recorded with the Bureau of Conveyances under Doc No. 454714 and Doc No. 454715. (Exhibit "B")

Through this agreement, Kahala Hilton Company constructed a Beach cove, which created a beach reserve of the foregoing 32,860 sq.ft. In addition to the beach cove, Kahala Hilton Company built two (2) seawall goins and an island, which held the beach reserve in place and provided for a South Pacific type landscape scenery to the permit area. By way of this agreement, the two (2) seawall goins and island contained lighting and irrigation lines which were owned by the State but were maintained by the Hotel.

The permit area is used for recreational purposes (surfboard racks, volleyball court, badminton court, walkway etc.) to enhance the beach frontage of the Kahala Hilton Hotel and to serve as a buffer zone between the sandy beach area and the hotel facilities.

By way of a letter dated September 26, 2005, the Land Division was informed that Kahala Hotel Investors, LLC (KHI) entered into a Purchase and Sale Agreement (PSA) for the acquisition of the Kahala Mandarin Oriental Hotel. Kahala Hotel Associates Limited Partnership is the seller under the Purchase and Sale Agreement and is also the holder of Revocable Permit No. S-6903.

The proposed use is allowable under the County zoning and there will be no changes under the existing use of the permit.

KHI has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from various State and County agencies. The Engineering Division, Aquatic Resources Division, Commission of Water Resource Management, Historic Preservation Division, Department of Hawaiian Home Lands, the Department of the Army Corps of Engineers, City and County of Honolulu, Department of Design and Construction, Department of Facility Maintenance and Department of Parks and Recreation have all expressed no objections.

The Office of Conservation and Coastal Lands stated that they have no objection towards the issuance of a revocable permit to KHI on a month-to-month basis as long as the permit area will be used as a continuation of the existing use. However, OCCL feels that if a long term lease was to be issued to KHI then there are some concerns from OCCL that KHI would need to address.

Based on the comments mentioned above from the Office of Conservation and Coastal Lands, the issuance of a month-to-month tenancy would be more appropriate than a long-term disposition to the applicant during the interim period, until the applicant can address OCCL's concerns regarding the issuance of a long-term disposition for the subject area.

Land Division have not received any other request to utilize the subject property from other parties and there are no other pertinent issues or concerns.

December 8, 2006

Staff is recommending the Board cancel Revocable Permit No.S-6903 to Kahala Hotel Associates Limited Partnership and the issuance a new permit to Kahala Hotel Investors, LLC.

RECOMMENDATION: That the Board:

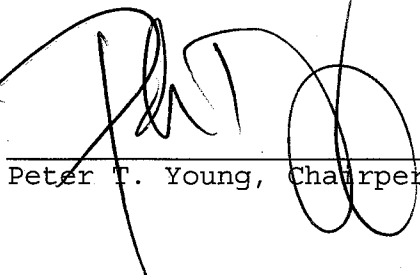
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the cancellation of Revocable Permit No.S-6903 to Kahala Hotel Associates Limited Partnership and issuance of a month-to-month revocable permit to Kahala Hotel Investors, LLC covering the subject area for recreational purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Steve Lau
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

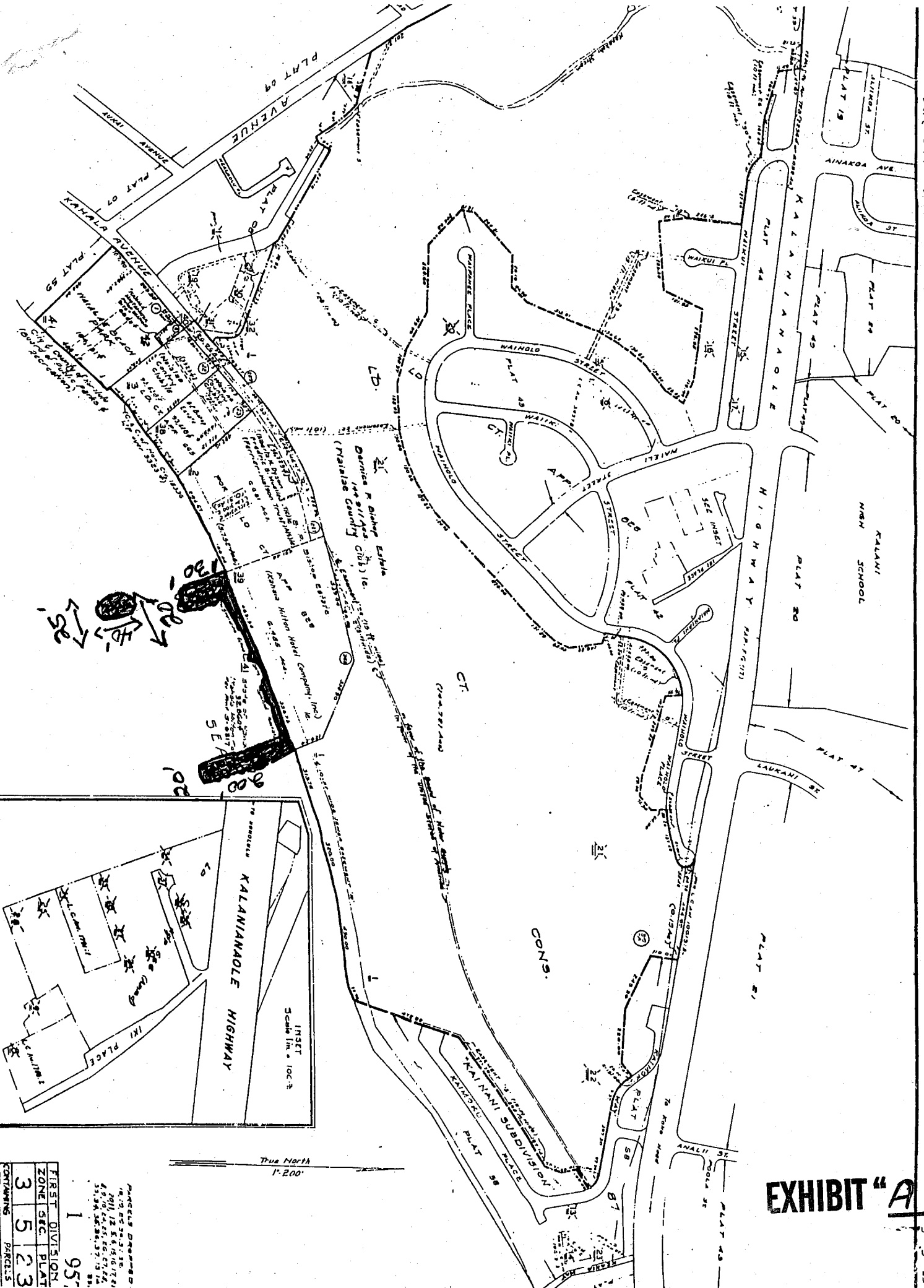


EXHIBIT "A"

PARCELS DRAWN		
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2011.12	8.25.17.21	
4.0	12.45.65.67.68	
31.34	36.38.37.35.14	
81.		
1	957	
FIRST DIVISION		
ZONE	SEC.	PLAT
3	5	23
CONTAINING		PARCELS

LOD 24457

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII

(Bureau of Conveyances)

Honolulu, Hawaii, SEP 13 1968

DOC NO 454714
DOC NO 454715

The attached instrument is a true copy of _____ received
for registration in this office, SEP 13 1968 at 11 10 o'clock A M, and
noted on Certificate (S) of Title Number (S) 83447, 76540 & 75667
and from which Certificate (S) of Title Number (S) _____ has (have) been issued.

Attest:

Pruehl K. K. K.
Assistant Registrar, Land Court
State of Hawaii

EXHIBIT "B"

RECORDATION REQUESTED BY:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

AFTER RECORDATION, RETURN TO:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

RETURN BY: MAIL () PICKUP (x)

THE ORIGINAL OF THIS DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
OFFICE OF
BUREAU OF CONVEYANCES

Received for record this 27th th
day of January, A.D., 1967
at 11:15 o'clock A.M. and
recorded in Liber 5568
on Pages 249

Space above this line for Registrars
use.

In accordance with the provisions of Section 343-21,
Revised Laws Hawaii, 1955, as amended, this page is
attached to that certain instrument dated
February 15, 1963 between:

STATE OF HAWAII

AND

KAHALA HILTON HOTEL COMPANY,
INC., ETALS

AGREEMENT

THIS AGREEMENT entered into this 15th day of February, 1963, by and between the State of Hawaii, hereinafter referred to as the "State," and the Kahala Hilton Hotel Company, Inc., a Hawaii corporation, whose principal place of business and post office address is 2005 Kalia Road, Honolulu, City and County of Honolulu, State of Hawaii, Charles J. Pietsch, Jr., whose principal place of business and post office address is 235 Queen Street, Honolulu aforesaid, David T. Pietsch, whose principal place of business and post office address is 235 Queen Street, Honolulu aforesaid, hereinafter referred to as the "owners" and the Waialae Country Club, whose principal place of business and post office address is 4997 Kahala Avenue, Honolulu aforesaid, the Sheraton Hawaii Corporation, whose principal place of business and post office address is 2259 Kalakaua Avenue, Honolulu aforesaid, the Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, whose principal place of business and post office address is 519 Halekauwila Street, Honolulu aforesaid.

WITNESSETH THAT:

WHEREAS, the Bernice P. Bishop Estate is the registered title holder of Lots 227 and 228, as shown on May 21 of Land Court Application No. 828 (Transfer Certificate of Title No. 83447) and Lot 23, as shown on May 2 of Land Court Application No. 665 (Transfer Certificate of Title No. 76540); and

WHEREAS, the Kahala Hilton Hotel Company, Inc. is the sub-lessee under the registered sublease (Land Court Document No. 289158 of said Lot 228 as shown on said Map of Land Court Application No. 838); and

L. 273491
e/p. - 285441
a/p. 304049

WHEREAS, Charles J. Pietsch, Jr. and David T. Pietsch are the lessees under registered leases (Land Court Document Nos. 273490 and 273491 of the said Lots 227 and 228 as shown on the said Map 21 of Land Court Application No. 826); and

no interest

WHEREAS, the Sheraton Hawaii Corporation is the registered title holder of said Lot 22 as shown on said Map 2 of Land Court Application No. 665 (Transfer Certificate of Title No. 75667); and

WHEREAS, the Waialae Country Club is the lessee under an unrecorded lease of the said Lot 23 as shown on Map 2 of Land Court Application No. 665 and also lessee under an unrecorded lease of the said Lot 22 as shown on Map 2 of Land Court Application No. 665; and

WHEREAS, the owners desire to dredge a swimming area and construct a beach and on their behalf a request to the Department of Transportation, Harbors Division, for permission to dredge and fill certain areas fronting and abutting their respective properties for the purpose aforesaid has been made; and

WHEREAS, the State and the said Trustees, the said Sheraton Hawaii Corporation and the Waialae Country Club are desirous of having a public beach and swimming area constructed in the place and manner shown on Exhibit "A" and the owners agree to construct such beach and swimming area for and on behalf of the State; and

original to
K.H. H.G. Inc.
304049

recorded
4295 ✓

WHEREAS, the Department of Transportation, Harbors Division, under Permit No. 1164, has approved of the application for the permit to create said beach at Waialae-Kahala area on August 13, 1962 and indicated its willingness to such dredging and filling under the terms of such permit and are willing to permit such dredging and filling under the terms and conditions as are herein set forth; and

WHEREAS, the City and County of Honolulu has granted its approval of the construction of said Waialae-Kahala beach improvement by letter dated September 18, 1962;

NOW, THEREFORE, and in consideration of the terms, covenants and conditions herein set forth on the part of the parties hereto to be observed and performed, the State hereby grants to the owners the right to dredge and fill that certain area hereinafter described in accordance with the plans and specifications hereinafter set forth.

The terms, covenants and conditions under which this right and permit is granted are as follows:

(1) The permit area to be dredged or filled is that area described and outlined on the plan entitled "Beach Improvement at Waialae-Kahala" prepared by Wilson & Associates, Architects and Engineers, and dated May 25, 1962, a copy of which plan is attached hereto as Exhibit "A" and made a part hereof.

(2) The owners hereby jointly and severally agree to dredge and fill those areas as shown on Exhibit "A" in accordance with the section, depths and notations shown thereon.

(3) Said Exhibit "A" has been submitted to and approved by the Department of Transportation, Harbors Division.

(4) The dredging and filling authorized herein shall commence not later than one month from and after the date and execution of the agreement and all work thereon shall be completed within twelve (12) months from said commencement date. In the event the filling operation is abandoned prior to completion, the owners hereby jointly and severally agree to restore the project areas back to the condition existing prior to the commencement of operations under this agreement.

(5) Coral and other material obtained by the dredging operations shall be disposed of in the following manner:

(a) The owners shall use so much thereof as is needed to fill in the "Fill Area" designated in Exhibit "A", "Typical Section A-A", page 2, identified as "Firm Salvaged material."

(b) All or any part of the remaining coral or other material may be taken by the owners for any purpose upon paying to the State royalty therefor in accordance and with the established schedule of rates as set by the Department of Transportation, Harbors Division.

(c) All coral or other material not used or taken as provided for in Sections (a) and (b) above shall be hauled and dumped at the owners' expense at a location to be determined by the Department of Transportation, Harbors Division.

(6) The owners shall comply with the provisions of all applicable statutes, ordinances, rules and regulations of any governmental body affected by the work permitted herein.

(7) The owners shall, jointly and severally, for a period of five (5) years after the effective date of this agreement save the State and the City and County of Honolulu harmless from and against any and all claims for personal injury, death or property damage, including but not limited to beach erosion and injury to vested fishing rights caused by the operations of the owners under this agreement.

From the commencement of the construction of this project as shown on Exhibit "A" and until three (3) months from and after the completion and acceptance thereof as provided in this agreement, the owners and/or contractor shall obtain and keep in force such liability insurance and such performance and/or completion bond as may be required by the Director of Transportation to protect the interest of the State. The requirement of liability insurance and bond for the period hereinabove provided shall in no way affect the five-year indemnification provided for in this provision of the agreement.

(8) It is mutually understood and agreed by all the parties hereto that this agreement shall in no way affect the title and ownership of the land subject to this agreement. Title to and ownership of all filled and reclaimed lands and improvements seaward of the makai boundaries of Land Court Applications Nos. 828 and 665 shall remain in and vest in the State of Hawaii and shall be used as a public beach. And it is further understood and agreed that the owners, the Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, the Sheraton Hawaii Corporation, and the Waialae Country Club hereby waive any and all claims to littoral rights and any accretion that may accrue.

*Registered
and.*

(9) The project shall be considered completed for the purposes of this agreement when so determined by the State, by the Director of Transportation, and the determination of the State shall be announced by written notice to the owners and may be made on the basis of a full or substantial completion of the project.

(10) The owners shall keep the mouth of Kapakahi Stream clear of sand and loose coral for a period of twenty-five (25) years from the date of this agreement. Such sand and coral shall remain the property of the State and the disposition thereof to be determined by the Director of Transportation.

(11) In any conflict between the terms of this agreement and said Permit No. 1164, the terms and provisions of this agreement shall govern.

(12) The Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, the Sheraton Hawaii Corporation and the Waialae Country Club hereby consent to the construction of said beach and improvements by the owners as provided herein, and reserve unto themselves the right of access to such beach and improvements, subject to all applicable statutes, ordinances, rules and regulations of any governmental body.

IN WITNESS WHEREOF, the State of Hawaii has caused these presents to be executed by its duly authorized officials and the Kahala Hilton Hotel Company, Inc. has caused these presents to be executed and its corporate seal to be hereto affixed by its duly authorized officers and the Waialae Country Club has caused these presents to be executed by its duly authorized officers and the Trustees of the Bernice P. Bishop Estate have caused these presents to be executed by their duly authorized officers and Charles J. Pietsch, Jr. and David T. Pietsch have hereunto set their hands, all effective as of the day and year first above written.

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

On this 26th day of February, 1963

before me personally appeared

and

Charles J. Pietsch, Jr.
6 Vincent Esposito
Frank E. [illegible], who, being by me duly sworn,

did say that they are the Exec. Vice Pres. and Asst. Sec. & Treas. respectively of KAHALA HILTON HOTEL COMPANY, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that the said Charles J. Pietsch, Jr. and 6 Vincent Esposito severally acknowledged said instrument to be the free act and deed of said corporation.

Birdie Cooper

Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires: 2-9-67

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

On this 15th day of February, 1963, before me personally appeared CHARLES J. PIETSCH, JR. and DAVID T. PIETSCH, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Birdie Cooper

Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: 2-9-67

Charles Joseph Pietsch Jr
David Thomas Pietsch

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

Louis Watson

BOARD OF LAND AND NATURAL RESOURCES

By

By

APPROVED AS TO FORM:

L. Akita
Ass't. Attorney General
Dep. State of Hawaii

KAHALA HILTON HOTEL COMPANY, INC.

By

By

CHARLES J. PIETSCH, JR.

DAVID T. PIETSCH

TRUSTEES UNDER THE WILL AND OF THE
ESTATE OF BERNICE P. BISHOP, DECEASED

APPROVED AS TO FORM
ROBERTSON, CASTLE & ANTHONY

BY

SHERATON HAWAII CORPORATION

By

By

WAIALAE COUNTRY CLUB

By

By

Kenneth J. Brown
Kuga Kowale
treasurer

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 19th day of February, 1963, before
me personally appeared Edwin P. Murray

Frank E. Midkiff

and

H. K. Keppeler

three of the Trustees under the Will and of the Estate of Bernice
P. Bishop Estate, deceased, to me known to be the persons described
in and who executed the foregoing instrument, and severally acknow-
ledged that they executed the same as their free act and deed.

Lawrence J. Silva
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: DEC 14 1965

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS

On this 23 day of February, 1963

before me personally appeared Richard E. Holtzman

who, being by me duly sworn did say that he is the President

of SHERATON HAWAII CORPORATION, a Delaware corporation, and that the
seal affixed to the foregoing instrument is the corporate seal of said
corporation, and that said instrument was signed and sealed in behalf
of said corporation by authority of its Board of Directors and that the

said Richard E. Holtzman acknowledged said instrument
to be the free act and deed of said corporation.

Dwight E. Bauer
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: Feb. 29, 1964

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS.
)

On this 26th day of February, 1963, before
me personally appeared Kenneth F. Brown and
Hugh Hamell, who, being by me duly sworn
did jointly and severally say that they are the
President and Treasurer,
respectively of the Waialae Country Club, and that the seal affixed
to the foregoing instrument is the corporate seal of said corporation;
and said instrument was signed and sealed on behalf of said corporation
by authority of and with the approval of the Board of Directors of
the WAIALAE COUNTRY CLUB and said Kenneth F. Brown and
Hugh Hamell jointly and severally acknowledged
said instrument to be the free act and deed of said corporation.

Mildred Nakamura
Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires: 6/30/66